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formal pleadings in writing, a warrant charging the unlawful sale of liquor, and made the basis of the trial in the circuit court on appeal from the justice's judgment, must be clear and specific, so as to inform accused of the offense with which he is charged; but such a warrant, charging that defendant did, on a certain day, in a certain magisterial district, and in a certain county, unlawfully sell certain kinds of intoxicating liquors to a certain person, and to divers other persons, was sufficiently definite.

**2. Same—Evidence—Distinct Offenses.**—In a prosecution for an illegal sale of liquor, where the warrant averred a sale to a certain person, and to divers other persons, on a certain date, evidence of a sale made by defendant on a previous date was inadmissible, although such sale was made during the year preceding the institution of the prosecution, within which, under Code 1904, § 3889, defendant might have been prosecuted for such sale.

[Ed. Note.—For cases in point, see vol. 29, Cent. Dig. Intoxicating Liquors, § 273.]

**3. Criminal Law—Appeal—Harmless Error.**—In a prosecution for an illegal sale of liquor, the act of the commonwealth's attorney in asking defendant, on cross-examination, whether he did not have a United States license to sell liquor, while objectionable, was not prejudicial, where the court told defendant he was not bound to answer, and instructed the jury that they could not draw any inference against defendant from his refusal to answer the same.

**4. Intoxicating Liquors—Offenses—Punishment—Statutory Provisions.**—Acts 1902-04, p. 224, c. 148, § 143, with reference to the unlawful sale of liquor, provides that a violation thereof shall be punished by fine, and, in the discretion of the court, by imprisonment. Such section also provides (on page 220) that it shall not be construed as repealing any special act prohibiting the sale of liquor in any county or town. Acts 1901-02, p. 601, c. 516, relative to the illegal sale of liquor in Lancaster county, provides that any person violating the same shall be fined not more than \$500, and may be imprisoned until the fine is paid. Held, that the general statute is inoperative in Lancaster county, and one convicted of violating the liquor law in that county can not be sentenced to confinement in the county jail in addition to a sentence of a fine.

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TIDEWATER QUARRY CO. *v.* SCOTT.

March 1, 1906.

[52 S. E. 835.]

**1. Action—Form—Waiver of Tort.**—The tort involved in a conversation of property may be waived, and the injured party may

bring assumpsit for the value of the property on the wrongdoer's implied contract to pay for the property converted by him.

[Ed. Note.—For cases in point, see vol. 1, Cent. Dig. Action, § 198.]

**2. Set-Off—Actions of Contract—Claims for Conversion.**—Under Va. Code 1904, § 3298, providing that in a suit for debt defendant may prove any payment or set-off, defendant in an action of assumpsit may set off a claim for the conversion of his property by plaintiff.

[Ed. Note.—For cases in point, see vol. 43, Cent. Dig. Set-Off and Counterclaim, §§ 16, 32.]

**3. Pleading—Statement of Defense—Sufficiency.**—Under Code 1887, § 3249 [Va. Code 1904, p. 1709], authorizing the court to order a statement of the particulars of the claim or the ground of defense to be filed, the statement need not set out the particulars of the claim or the ground of defense with the formality or precision of a declaration or plea, but only in such manner as to notify the adverse party of its character, and an itemized account of goods claimed by defendant to have been converted by plaintiff is a sufficient statement of defense under a plea of set-off.

[Ed. Note.—For cases in point, see vol. 39, Cent. Dig. Pleading, § 293.]

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#### EASTERN STATE HOSPITAL *v.* GRAVES' COMMITTEE.

March 1, 1906.

[52 S. E. 837.]

**1. Limitations of Actions—Claims of State.**—Unless the statute expressly so provides, limitations do not run against the state, either as to debts and demands of a personal nature in favor of the state or as to real estate held by it.

[Ed. Note.—For cases in point, see vol. 33, Cent. Dig. Limitation of Actions, § 36.]

**2. Same—Actions in Name of State.**—Where a suit is brought in the name of the state, but the state has no real interest in the litigation, and its name is being used merely to enforce a right in favor of an individual or corporation, the defense of laches or limitations may be made.

[Ed. Note.—For cases in point, see vol. 33, Cent. Dig. Limitation of Actions, § 36.]

**3. Same—Actions for State.**—Where a suit is brought for the sole benefit of the state, the defense of limitations can not be made, although the suit is not brought in the name of the state.

[Ed. Note.—For cases in point, see vol. 33, Cent. Dig. Limitation of Actions, § 36.]

**4. Parties—Real Party in Interest—Determination.**—The courts will determine who is the real party in interest in an action by refer-